

Decision **DRAFT DECISION OF ALJ VIETH** (Mailed 5/6/2003)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

The Greenlining Institute, Latino Issues Forum,

Complainants,

vs.

Pacific Bell, Pacific Bell Information Services,

Defendants.

Case 99-01-039  
(Filed January 27, 1999)**OPINION DENYING PETITION TO MODIFY DECISION 03-03-022**

Decision (D.) 03-03-022 awarded the Greenlining Institute (Greenlining) and Latino Issues Forum (LIF) \$229,785.34 in compensation for substantial contributions to D.01-04-037. On April 8, 2003, Greenlining filed a petition for modification of D.03-03-022. Greenlining believes that its attorney and expert rates should be reconsidered in light of the rates awarded to attorneys for Disability Rights Advocates in D.03-01-074. On May 2, SBC California (SBC), on behalf of Pacific Bell and Pacific Bell Information Services, filed as response. SBC does not oppose an increase in Greenlining's attorneys' rates; it suggests that expert witness value is less fungible (being dependant upon education, experience, subject matter and skill in testifying), but then offers no opinion on the request to increase Greenlining's experts' rates. This decision denies the petition to modify.

D.03-01-074 awarded rates for 2001 and 2002 for the following attorneys for Disability Rights Advocates:<sup>1</sup>

<u>Attorneys</u>	<u>Requested</u>	<u>Adopted</u>
Sid Wolinsky	\$535	\$435 <sup>2</sup>
Lawrence Paradis	\$405	\$310 <sup>3</sup>

In its petition, Greenlining argues that its attorneys and experts have comparable experience to Wolinsky and Paradis and should receive close to the same rates for their work in 1999 as the rates adopted for 2001 and 2002 for Wolinsky and Paradis.

D.03-03-022 awarded rates for 1999 for the following attorneys and experts for Greenlining and LIF:

<u>Attorneys</u>	<u>Requested</u>	<u>Adopted</u>
Robert Gnaizda	\$300	\$300
Susan Brown	\$260	\$275
Christopher Witteman	\$250	\$245
<u>Experts</u>	<u>Requested</u>	<u>Adopted</u>
John Gamboa	\$250	\$150
Thomas Hargadon	\$250	\$250
Michael Phillips	\$250	\$250

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<sup>1</sup> This list includes only those advocates for Disability Rights Advocates cited by Greenlining in its petition.

<sup>2</sup> Rate adopted for 2001 and 2002.

<sup>3</sup> Rate adopted for 2001.

Greenlining acknowledges that the 1999 rates it now seeks for its attorneys and experts are based on rates awarded for work in 2001 and 2002, so Greenlining adjusts the rates downward by 5% to account for the different years. D.03-03-022 adopted the rates that Greenlining and LIF requested for Gnaizda, Hargadon, and Phillips but adopted different rates for Witteman and Gamboa, based on the showing made by Greenlining and LIF in their request for compensation for 1999 rates. D.03-03-022 also awarded a higher rate for Brown than requested, based on the fact that a higher 1999 rate had been adopted while the request for compensation was pending.

Greenlining argues that its experts, Gamboa, Hargadon, and Phillips, should be awarded a rate based on the rate adopted for attorney Paradis, who, in addition to being an attorney, is also the Executive Director of Disability Rights Advocates. Paradis was awarded a rate for his legal services in D.03-01-074, therefore the comparison is not on point. In addition, when an intervenor employs an outside expert (like Hargadon and Phillips in this case), the rates awarded cannot exceed the rates billed to the intervenor. Based on invoices submitted in the request for compensation, it would be inappropriate to require ratepayers to pay more for the services of these experts than the costs incurred by Greenlining and LIF to pay the experts.

Greenlining argues that despite the fact that it requested certain rates when it filed its request for compensation, the Commission should adjust the rates for 1999 now. We disagree. Many parties eligible for intervenor compensation appear before the Commission. Each intervenor requests hourly rates for its advocates based on many factors, resulting in a range of rates awarded to advocates with similar training and experience. Each intervenor must make a showing regarding the hourly rates requested to justify an award

and must do so on a timely basis. We look to other rates adopted as a check that the rates requested are in the range of those adopted for other advocates with similar training and experience, but do not adjust them upward on our own initiative unless a higher rate than requested for that particular advocate has been adopted while the request was pending. It is up to each intervenor to justify their request for hourly rates, not the Commission's responsibility to award rates higher than requested simply because another intervenor may have been awarded a higher rate.

Greenlining could have filed a timely supplement to its request in this proceeding based on its review of D.03-01-074 but did not do so. If it chooses, Greenlining may file timely supplements to any pending requests for compensation to seek higher rates than originally requested. Consistent with the requirements for an initial request for intervenor compensation, any supplement must clearly state what rates the Commission has previously adopted for the advocate or advocates and the years in question.

### **Comments on Draft Decision**

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Greenlining filed timely comments on May 15, 2003.

After considered review of the comments, we make no changes to the draft decision. Greenlining largely reasserts the arguments made in its petition, which we discuss herein. Greenlining has not shown that the rates we awarded to Greenlining's counsel and expert witnesses were arbitrary or unfair. We awarded compensation based on rates approved for 1999, the year in which the case was litigated. The rates are keyed to the rates actually requested and

Greenlining has not shown why ratepayers should pay more. Though SBC does not oppose an increase in Greenlining's attorneys' rates, neither does it explain why ratepayers should pay Greenlining more. (Notably, shareholders do not pay intervenor compensation awards.)

In other respects, Greenlining's comments fall outside the scope authorized by the Commission's Rules by raising matters that are unrelated to its request for a higher award. Greenlining's criticism of the administrative law judge, moreover, fails to recognize that the Commission's decision on the merits of this case, and on Greenlining's application for rehearing, both concluded that Greenlining had not prevailed on its substantive theories. And while Greenlining is correct that the Commission did not issue a decision on the underlying intervenor compensation request within 75 days of the date the initial request was filed, Greenlining's initial request was incomplete. As D.03-03-022 states, Greenlining filed errata in August 2001 and it filed an amendment in October 2002. Consistent with previous Commission decisions, however, we awarded Greenlining interest on the award, beginning 75 days from the date of its initial request.

### **Assignment of Proceeding**

Carl W. Wood is the Assigned Commissioner<sup>4</sup> and Jean Vieth is the assigned ALJ in this proceeding.

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<sup>4</sup> This proceeding formerly was assigned to Commissioner Neeper.

**Findings of Fact**

1. Greenlining and LIF requested certain rates and provided justification for them in their request for compensation, errata, and amendment. D.03-03-022 adopted rates after reviewing the requested rates and justification provided.
2. Intervenor requests for hourly rates are based on many factors, resulting in a range of rates awarded to advocates with similar training and experience.
3. Each intervenor must justify its request for hourly rates in its request for compensation.
4. Greenlining did not file a timely supplement to its compensation request in C.99-01-039.

**Conclusions of Law**

1. The Commission should not adopt higher rates than requested on its own initiative unless a higher rate for a particular advocate has been adopted while the request was pending.
2. D.03-03-022 should not be modified.
3. If it chooses, Greenlining may supplement pending requests for compensation to seek advocates' rates different than previously requested.

**O R D E R****IT IS ORDERED** that:

1. The petition to modify Decision 03-03-022 by Greenlining Institute is denied.
2. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.